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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/529,383

03/28/2005

Yuzo Otsuka

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4579

7590

03/15/2006

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EXAMINER

GARBER, CHARLES D

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/529,383

Applicant(s)

OTSUKA, YUZO

Examiner

Charles D. Garber

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9 and 11 is/are rejected.
- 7) ☒ Claim(s) 2-4,6,8 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

In accordance with 37 CFR 1.105 Examiner requires the submission, from individuals identified under § 1.56(c), or any assignee, such information as may be reasonably necessary to properly examine or treat the matter. This includes:

The "inspection manual" discussed on page 2 of Applicant's specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 5, 7, 9, 11 are rejected under 35 U.S.C. 102(a) as being anticipated by admitted prior art (Admission).

Regarding claim 1, Applicant in discussion of prior known methods recites "in accordance with an inspection manual, an operator inspects a seal portion for seal condition. Specifically, the operator samples completed packaging containers in accordance with the manual; empties the sampled packaging containers of liquid food; cuts the empty packaging containers open by use of a cutter or the like; cleans and dries the opened packaging containers to thereby make inspection samples; and visually inspects seal portions for seal condition from the inside of each of the inspection samples." Applicant explains that above method is a "conventional method for making an inspection sample".

Examiner considers a "cutter" is a cutting device and may be used for cutting the preliminary inspection sample along a predetermined cutting line so as to make an inspection sample as in the instant invention intended use.

A cutter may also be used to peel a predetermined fusion-bonded piece of a packaging container off a wall of the packaging container so as to make a preliminary inspection sample as in the instant invention intended use. All one would need to do is insert the cutter between a flap and a wall of a fusion bonded package and pry the flap loose.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations *Ex parte Masham 2* USPQ2d 1647 1987).

As for claim 5, a "cutter" is considered to be a cutting tool.

As for claims 7 and 9, the recitation "operator ... cleans and dries the opened packaging containers to thereby make inspection samples" implies the operator employs devices such as water source (faucet, bucket, etc.), drying implements to effect the cleaning and drying (towel, blower, etc.)

As for claim 11, that sample itself is not considered to form a portion of the invention device.

Allowable Subject Matter

Claims 2-4, 6, 8, 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Furthermore, Examiner considers claim 1 would be allowable if simply amended to employ "means plus function" language invoking 35 USC 112, sixth paragraph as the Admission is not considered to anticipate corresponding structure, material, or acts described in the specification description of the invention and equivalents thereof.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schirmer et al (US Patent 4,382,513) teaches "After the seals were made with heat and pressure a one inch strip was cut across the seal area and the ends of each strip were placed in the jaws of an Instron testing machine so that the seal was approximately at the center of the space between the gripping jaws."

Similarly, Wagner, Jr. et al. (US Patent 4,447,494) teaches "A plurality of separate seals are simultaneously made on each strip of film. The film strips are cut one inch wide and the seal strengths are determined by placing the free ends of the film in the jaws of a Suter testing machine and peeling the seals apart".

Lawson et al. (US Patent 5,582,344) teaches "A 21/8" I.D. circle of each test barrier board was cut and placed in the lid of the four ounce jar (barrier portion facing inwards) and sealed into place around the perimeter of the inside of the cap with vinyl tape" to test the effectiveness of a package sealing in fragrance.

Skotnikov et al. (US Patent 5,526,705) teaches a device that automatically opens sample containers to dispense the contents.

Collins, Jr. et al. (US Patent 5,383,322) teaches a "machine ... designed to detect various defects in the cigarette packs, such as, for example, crushed packages, missing or wrinkled overwraps, defective side and end flap seals, missing or misplaced tear tapes and the like."

Mellbin et al. (WO 97/07025) teaches a method for testing an aseptic food box seal with built in poles for electrically testing through the seal.

Ostermann et al. (DE 3920484 A1) teaches a aseptic food box with built in window that may be used to inspect the box interior.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles D. Garber whose telephone number is (571) 272-2194. The examiner can normally be reached on 8:00 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2856

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles D. Garber
Primary Examiner
Art Unit 2856



cdg